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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 25th May, 1957

S.R.O. 1840.—In pursuance of the provisions of sub-section (1) of section 86 of the Representation of the People Act, 1951, the Election Commission hereby publishes a copy of the Election Petition No. 427 of 1957, presented to the Commission on the 3rd May, 1957, under section 81 of the said Act, by Shri Hotilal S/o Shri Kallan Singh M.L.A. Pleader, Bharatpur, calling in question the election to the House of the People from the Bharatpur Parliamentary constituency of that House of Shri Raj Bahadur Ministry of State in the Ministry for Transport and Communication, 9, Akbar Road, New Delhi.

Presented to me by Shri Hotilal whose signature has been obtained in the margin and attested as having been signed before me this the third day of May One Thousand Nine Hundred and Fifty Seven.

Sd/- A. KRISHNASWAMY AYYANGAR, Secy.

3rd May, 1957.

Sd/- HOTILAL.
Attested.

Sd/- A. KRISHNASWAMY AYYANGAR, Secy.

3rd May, 1957.

THE ELECTION COMMISSION OF INDIA, NEW DELHI

ELECTION PETITION No. 427 OF 1957

In the matter of Election to the Bharatpur Parliamentary Constituency.

In the matter of Shri Hotilal S/o Shri Kallan Singh M.L.A., Pleader,
Bharatpur.

Petitioner.

Versus

Shri Raj Bahadur, Minister of State in the Ministry for Transport & Communication, 9 Akbar Road, New Delhi.

Respondent.

The humble petition of the above named Petitioner Most Respectfully Sheweth:—

1. That the petitioner is an elector in the Bharatpur Parliamentary Constituency, being enrolled at No. 7 in the Bharatpur Assembly Constituency, village

Indu electoral roll forming part of the said parliamentary Constituency and is entitled to present this petition to question the election of the Respondent.

2. That Shri Mukat was a candidate at the said election, having duly filed three nomination papers.

3. That the scrutiny of the nomination papers for the said constituency took place on 1st February, 1957 and the Nomination papers of Shri Mukat were refused by the Returning Officer on the ground that Shri Mukat being Oath Commissioner for Civil Courts, Bharatpur, was holding an office of profit, and was therefore disqualified to stand for the election of the said Constituency. The Order of the Returning Officer reads as follows. (A certified copy of the said order is annexed with the petition and is marked Ex. I).

COPY OF THE ORDER OF RETURNING OFFICER DATED 1ST FEBRUARY, 1957 REJECTING THE NOMINATION PAPER OF SHRI MUKAT:

"Office of the Returning Officer, Bharatpur Nomination No. A/15, A/16 and A/17 filed by M/s Guri Shanker, Ram Charan and Sujjan Singh, proposing the name of Shri Mukat for the Bharatpur Parliamentary Constituency, were considered.

The following objections raised:

1. By Shri Ram Swarup, Election Agent of Shri Rajbahadur to the effect that Shri Mukat is a legal advisor to the Municipal Board, Bharatpur, and thus holds office of profit in the meaning of Art. 191 of the Constitution of India and is thus disqualified to stand for the Parliament.

Shri Mukat produced a letter dated the 28th January, 1957, from the Chairman, Municipal Board, Bharatpur, that his resignation from the office of the Legal Advisor has been accepted with effect from the 28th January, 1957. I accept this and reject the objection of Shri Ram Swarup.

2. That Mukat is an Oath Commissioner for Civil Courts, Bharatpur. He should, therefore, be considered to hold an office of profit under the State Government.

It was argued on behalf of Shri Mukat that according to Section 9 of the Representation of People Act 1951 an office of profit under the State Government is not an office of profit under an appropriate Government with reference to a seat in the Parliament.

I have considered the arguments for and against the objection. According to Sec. 102 of the Constitution of India, a person shall be disqualified for being chosen as a member either of the House of the Parliament if he holds any office of profit under the Government of India or the Government of any state. According to this Art. of the Constitution holding as office of profit under the State Government of Rajasthan, will be considered a disqualification for being chosen a member of the Lok Sabha. Office of Oath Commissioner which Shri Mukat holds, is under the High Court and according to Art. 214 of the Constitution the High Court of a particular State is a part of the State Government. Even if it were not and were to be considered under the Central Government, the Oath Commissioner appointed by the High Court of Rajasthan would be considered to be an office of profit under an appropriate Government with reference to a seat in the Lok Sabha.

I therefore, hold that Shri Mukat holds an office of profit under an appropriate Government and his Nomination Paper numbering A/15, A/16 and A/17 are rejected on this account. Copies of this order shall be attached to each of the Nomination Papers hereby rejected.

Sd/- VISHNU DUTT SHARMA, I.A.S.

Returning Officer,
Bharatpur Parliamentary Constituency.

1st February, 1957.

4. That the counting of votes took place on the 22nd March, 1957 with the following result:

(1) Shri Raj Bahadur—108575 Votes.

(ii) Shri Girraj Saran Singh—105689 Votes.

5. That the Respondent was declared elected on 22nd March, 1957 having received the majority of votes.

6. That your petitioner asserts that the rejection of the Nomination Papers of Shri Mukat on the aforesaid grounds was improper for the following reasons:—

(a) That an Oath Commissioner does not hold any office of profit under either the Government of India or the Government of any State and as such even if Shri Mukat was Oath Commissioner, he was not disqualified for being chosen as and for being, a member of the House of Peoples.

7. That the petitioner further asserts that Shri Mukat was not an Oath Commissioner and was therefore not disqualified for being chosen as and for being a member of the House of Peoples. Shri Mukat together with others was appointed as Oath Commissioner by the District Judge, Bharatpur, subject to their giving an undertaking that they will so adjust their timings that at least one of them is always present during court hours for verifications of affidavits at each of the places mentioned in the order appointing them as Oath Commissioners and this undertaking was required to be submitted forthwith. Shri Mukat having not given any such undertaking cannot be regarded to have been appointed as Oath Commissioner, even if it be held that the Oath Commissioner, holds an office of profit, Shri Mukat having not given the undertaking as aforesaid till the date of scrutiny he was not an Oath Commissioner.

8. That Shri Hansraj was also a candidate at the said election having filed his Nomination Paper for the said Constituency.

9. That Shri Hansraj retired from the contest after giving notice of retirement to the Returning Officer on 15th February, 1957. (A certified copy of the notice is attached herewith and is marked Ex. 2).

10. That Shri Hansraj having given notice of retirement as aforesaid was not deemed to be a contesting candidate by the Returning Officer and as required under rule 21 of the Representation of the People (Conduct of Election and Election Petitions) Rules 1956 no ballot box was provided for the said candidate at the polling.

11. The petitioner asserts that the retirement of the said candidate was illegal and that by regarding the retirement of the said candidate under section 55A of the Representation of the People Act 1951 and by not providing any ballot box for the said candidate at the Poll, the Returning Officer had committed an illegality in not complying with the provisions of the said Act and the rules made there-under for the following reasons:—

(i) That the Poll of the said Parliamentary Constituency took place from the 25th February, 1957 and that a candidate under Sec. 55A could retire from the contest till the 14th February, 1957.

(ii) That the said candidate having delivered the notice of retirement to the Returning Officer on the 15th Feb. could not be deemed to have retired from the contest under Section 55A of the Representation of People Act.

(iii) That the said candidate having not retired from the contest as provided under section 55A, it was incumbent on the Returning Officer, to have provided with a ballot box for the said candidate at every polling booth.

(iv) As no ballot box for Shri Hansraj was provided, about ten to sixteen thousand voters who had gone to vote for Shri Hansraj in the absence of any ballot box for Shri Hansraj at the Polling booths voted for the respondent.

12. That by noncompliance with the provisions of the said Act and the rules made thereunder the result of the Election has been materially affected and but

for the said noncompliance, the respondent would not have secured the majority of votes.

13. That the petition is presented within time.

14. That your petitioner has deposited Rs. 1000/- (on thousand) the security amount, the receipt of which is hereby enclosed.

It is, therefore, prayed that:—

- (a) The election of respondent No. 1 be set aside;
- (b) It be declared that the election to the Bharatpur Parliamentary Constituency is wholly void.
- (c) Costs be awarded.

HOTILAL,
Humble petitioner,
Hotilal S/o Shri Kallan Singh,
M.L.A., Pleader, Bharatpur.

The 30th April, 1957.

I, Hotilal S/o Shri Kallan Singh, resident of Bharatpur, do hereby verify on oath today the 30th April, 1957 that the contents of the petition from para 1 to 14 and the prayer clause are true within my personal Knowledge.

Sd/- HOTILAL,
Deponent.

The 30th April, 1957.

Encl: 1. Receipt of Deposit of Security.

2. Ex. 1.

3. Ex. 2.

[No. 82/427/57.]

By Order,
DIN DAYAL, Under Secy.